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Current Topics.

His Honour Judge A. R. Kennedy, K.C.

THE sudden death of His Honour Judge KENNEDY on 10th February deprives the county court bench of one of its most distinguished and learned members. ALFRED RAVENSCROFT KENNEDY was born on 15th February, 1879. He must have inherited some of his great ability, for his father was Lord Justice KENNEDY, one of the greatest judges who ever sat in the Court of Appeal. In 1897 he went from Eton to King's College, Cambridge, where he took honours in classics and in history. In 1903 he was called to the Bar at Lincoln's Inn. At first his main practice was in and about Liverpool, but when war came in 1914 he became an additional legal adviser at the Foreign Office. In 1919 he took silk and later, in 1922, became a Bencher of his Inn. In 1924 he entered Parliament, and in 1925 he became Recorder of Burnley. In 1929 he became a county court judge, and the high quality of his work gained him steady recognition as an impartial and able judge. Not only did he sit on several occasions as Commissioner of Assize, but he was also deputy chairman of the Gloucestershire Quarter Sessions, a member of the Aliens Tribunal in 1939, and member of the County Courts Rule Committee. The late judge was a legal scholar of no small attainments. One of the biggest tasks which he successfully undertook was the editorship of "Benjamin on Sale." He also edited his father's "Law of Civil Salvage" and was the author of "Contracts of Sale C.I.F." His great talents will be sorely missed.

War Damage (Amendment) Bill.

WE have already referred to the proposed provision in the War Damage (Amendment) Bill, that where the question falls to be determined whether a payment is to be a "cost of works" or a "value" payment, the question is to be determined by reference to prices current at 31st March, 1939. Now that the text of the Bill has been published, it is possible to refer to other proposed amendments to the previous Acts. It will be recalled that para. 5 of Sched. I of the War Damage (Amendment) Act, 1942, provided for the payment of war damage to the owner of a rent-charge where the destruction of a property reduced its value to a point at which the annual value was less than the nominal rent-charge. The new Act (cl. 2 (1)) adds to sub-para. (11) of para. 5 of the First Schedule to the 1942 Act by amending the definition of the "available annual value" of the charged land in the hereditament as depreciated by the war damage or apart from any war damage. A proviso is to be added that no deduction is to be made from the annual value of the charged land in respect of the amount of a prior charge "in so far as the owner of the rent-charge in question (i.e., the prior charge) is liable for the payment of that amount as between himself and the owner of the proprietary interest out of which that rent-charge was created in that land." Another proposed amendment is in cl. 2 (2), which affects s. 39 (4) (*a*) of the principal Act. Its object is to enable a war damage payment to be made in respect of a rent-charge on land held for charitable or ecclesiastical purposes. Section 39 (4) (*a*) of the 1941 Act gives the Commission a discretion, where a value payment would, apart from its provisions be payable in respect of such land, to make a payment of such amount as they think appropriate. The amendment would enable a payment to be made under s. 39 (4) (*a*) to the owner of a rent-charge. Finally, the amendments effected by the Bill are to be retrospective in effect.

The Catering Wages Bill.

THE chief point made by the amendment moved by Sir DOUGLAS HACKING to the motion for the second reading in the Commons on 9th February of the Catering Wages Bill was that it was a breach of the undertaking given to the House on 12th November, 1942, regarding the introduction of "controversial legislation." Much depends on what interpretation must be put upon that ambiguous phrase. It is not always possible to foresee what degree of opposition a measure will arouse in either House, and certainly the degree of opposition aroused by the Catering Wages Bill seems to have taken many by surprise. If, however, the majority of those who voted against the second reading belonged to one party, it is also fair to point out that that party also provided more than a third of those who voted for the measure, and therefore it could not be said that it was one of party controversy. The Bill proposes to set up a long-term commission of impartial persons, not one of whom would be a civil servant. The commission is to make inquiries of the fullest kind, both public and private, into the catering industry, and to provide for wage boards where necessary. Wages boards would be able to make joint representations on matters which they regarded as contributing to efficiency and development of the industry, and would deal with remuneration, meals and rest intervals. In regard to payment in kind, the wages boards would have power to say what the kind would be. Finally, the Bill is to apply to civilian employees of the Crown as it will to other workers. The Minister of Labour, in moving the second reading, claimed that the regulation of industry by the Trade Boards Acts, so far from ruining industries, as forecast by some opponents in the debate in 1909, had made them prosperous. The Bill was needed first for war. As a result of an order for which his Ministry was responsible, canteens had been increased in number from a few hundreds to 8,000. The maintenance of the catering service was so important that it was imperative, whether by means of an Essential Works Order or in some other way, to leave it with a sufficient staff to maintain it in the interests of public morale. For the transition period it was necessary to provide the British people with a well-deserved holiday, and the catering industry would have to play its part. After the war, holidays had to be made complementary with employment. The Minister referred to the previous attempts in 1924 and 1930 to regulate the industry and said that the principal objection when the matter was fought out in court was that a trade board could not be made for the whole industry. There were so many various sections and such diversity that any attempt to establish one trade board for the whole industry would be wrong. The Minister said that he had accepted that and had tried to meet it. After a lengthy debate, Mr. MCCORQUODALE replied for the Government and pointed out that for many years now every political party had consistently supported the principles of collective bargaining and the development of self-government in industry. On a division the motion for the second reading was carried by 283 votes to 116.

Key Money and the Rent Acts.

THE statement of the Minister of Health in the House of Commons on 4th February that the taking of key money is an offence under the Rent Restrictions Acts, 1920 to 1939, deserves the greatest possible publicity. Mr. J. GRIFFITHS asked whether the Minister was aware of the growing practice of demanding key money, varying from £5 to £50, as a pre-condition to the letting of houses and flats, and what steps he had taken or proposed to take to stop the practice. The Minister replied that the matter was fully covered by s. 8 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and the First Schedule to the 1939 Act, which provide that a person shall not as a condition of the grant, renewal or continuance of a tenancy or a sub-tenancy of a controlled house require the payment of a fine, premium or other sum, or the giving of any pecuniary consideration in addition to the rent, and that any person requiring such a payment shall be liable to a fine not exceeding £100. Any contravention of these provisions, said the Minister, should be brought at once to the notice of the local authority, who have power to take proceedings. Mr. GRIFFITHS asked further whether the Minister was aware that the provisions to which he had referred were inadequate to stop the practice, which was going on all over the country. The Minister stated that they were fully adequate, provided the persons themselves would supply the evidence on which alone the local authority could act. If it is a fact that the practice of taking key money is growing, then it is as serious a

menace as any black market activities in price-controlled goods. If the machinery of rent-control is different from that of price control, the fact nevertheless remains that there is a rent-control, and requiring the payment of key money effectively increases the rent which the landlord is permitted to demand. It is questionable whether the abuse is fully covered by the section. For instance, it has been held that it only forbids the requiring of a premium or other like sum by a person capable of granting or renewing or continuing the tenancy concerned (*Remmington* v. *Larchin* [1921] 3 K.B. 404). In the same case it was pointed out that the section is penal in character, and when it is capable of two possible interpretations, it should be given that which is the more lenient. It is also noteworthy that the section does not make it an offence to offer or pay a premium for a lease or tenancy. The offerer of a bribe is recognised by the Prevention of Corruption Acts as in fact equally if not more guilty than the taker. It may be that if local authorities find themselves unable to deal with this gross abuse of the housing situation, the increasing shortage of house room will compel the introduction of a more drastic system of rationing and control.

Income Tax Evasion.

DELIBERATE planning to avoid the payment of tax on income is clearly not patriotic in time of war, even where it can be done without infringing the Income Tax Acts. Whether it is to be regarded as unpatriotic in normal times is a debatable issue. In a revenue case in the House of Lords on 11th February (*The Times*, 12th February) the Lord Chancellor expressed his disapproval in clear terms of such anti-social planning. He said that of recent years much ingenuity had been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such income without sharing in the appropriate burden of British taxation. Judicial *dicta* might be cited which pointed out that, however elaborate and artificial such methods might be, those who adopted them were "entitled" to do so. There was, of course, his lordship continued, no doubt that they were within their legal rights, but that was no reason why their efforts, or those of the professional gentlemen who assisted them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if they succeeded, was to increase *pro tanto* the load of tax on the shoulders of the great body of good citizens, who did not desire, or did not know how, to adopt those manœuvres. Another consequence was that the Legislature had made amendments to our income-tax code which aimed at nullifying the effectiveness of such schemes. The Lord Chancellor is a member of the executive as well as of the judiciary, and in pointing out that the conduct of taxpayers may be unsocial, even though not positively illegal, he was not going outside his province. There can be no doubt that in spite of the immense increase in taxation since the nineteenth century, the opinion of the Judicial Committee of the Privy Council in *Oriental Bank* v. *Wright* (1880), 3 A.C. 842, 856, that "the intention to impose a charge upon the subject must be shown by clear and unmistakable language," still expresses the law on the subject. It is still true, moreover, and it has been expressly stated in the courts, that it is not illegal so to arrange income that it becomes subject to less tax than if it were not so arranged. To ask legal advisers to refrain from pointing out to their clients the various legal methods by which they may decrease their burden of taxation is no doubt to ask a great deal, especially of those who specialise in income-tax problems. Whether in any particular case it is asking too much, having regard to the nature of the emergency through which we are passing, must be left to the conscience of the individual practitioner.

Sir William Beveridge and the Friendly Societies.

AT a meeting of the staff of the Hearts of Oak Friendly Society on 10th February, Sir WILLIAM BEVERIDGE explained the place of the friendly societies' work in relation to his social security plan. He said that it was true of the plan generally that it was a natural development from the past, and it was just as true of insurance against sickness, the main field occupied by the friendly societies. It was still the aim of the plan, in spite of all changes involved both in the rate and in the duration of sickness benefit, to preserve to the utmost the experience and the help of those who were its pioneers. The unification of social insurance and assistance under a Minister of Social Security did not mean that the citizen should obtain all benefits in the same way or from the same place. The citizen could and should continue to get money when sick in a different way from that in which he got money when unemployed, and normally he would do so. He could have disability benefit or pensions taken to him or posted to him just as at present, and under his agency proposals could continue to get voluntary and State benefit together from the same society. The principle, however, underlying the administration of every benefit, should be the positive remedial test of need, and not a negative starvation test. The establishment of labour exchanges had made it possible to substitute for the old negative test by deterrence, a positive test of the reality of unemployment by offer of a job. In his proposal the normal activity of the exchanges would be strengthened by systematic provision for training. The same principle should underlie sickness benefit. It was cruel to cut down benefit if sickness lasted a long time. Sick pay could not be controlled simply and wholly by medical certificates. The doctor's business was healing, not administration of benefit. The approved society system allowed individual societies to make gains or losses for their members according to whether their sickness claims were light or heavy. That system meant giving unequal benefits for equal compulsory contributions, and this conflicted with public feeling as to the nature of State insurance. Assuming equal benefits for equal contributions, the object of his agency proposal was to find an alternative basis for continuing administration through friendly societies or trade unions which gave sickness benefits by giving them a motive for care, in that they would be paying out benefits on their own account as well as State benefit. One of the reasons which had made the low rates of sickness benefit hitherto more defensible than they would otherwise have been had been that voluntary insurance against sickness through friendly societies had been strongly developed in Britain, covering many more people than were covered for unemployment by trade unions, though still only about one-third of those who ought to be covered. The existence of this voluntary insurance was no reason for keeping State sickness benefit below the subsistence minimum. But it was a reason for trying to keep as many men as possible in contact with the thrift organisations. The State benefit was to be no more than a minimum, to be paid without reference to any means of the insured person. The field would thus be kept clear for voluntary insurance to add to the minimum.

Finger Print Tests.

WHAT at first sight appears to have been an unusually independent verdict of a jury was given at the Central Criminal Court on 1st February in *R.* v. *Barry*, when the accused, who was charged with breaking and entering, was acquitted. The finger prints of the accused person, taken while he was in custody, were compared with a print made by the third finger of the right hand on a brandy bottle in a room which had been ransacked by the burglar, whoever he was, and the prosecution alleged that the prints corresponded. The burglary took place in June, and the accused man was not taken into custody until December. For the defence it was submitted that the identification was insufficient. The print on the bottle was smeared, and, it was said, did not correspond with that of the accused man. The accused went into the box and gave evidence that on the day of the robbery he was in Leicester. In his summing up, Judge MCCLURE said that counsel for the defence had boldly challenged the whole of the finger print system from its base. It was for the jury to study the prints in coming to their decision. For all practical purposes the finger print system had proved a certainty. It will be admitted that the fact is now well established that for all practical purposes there are no two finger prints of different persons which are alike. It is an interesting fact that enlargements of two sets of finger prints of a distinguished Indian Civil Servant, Sir W. HERSCHELL, taken at an interval of fifty years, hang in the Finger Print Department of New Scotland Yard, and are absolutely identical. Many are the instances in which prisoners have pleaded guilty to offences of which the only proof of their guilt has been finger-print evidence. A strict system of check and counter-check prevents all possibility of confusion. The system of classification used was that introduced by Sir EDWARD HENRY in 1901, when he was Assistant Commissioner, and later Chief Commissioner of the Metropolitan Police. The present case, however, provides a new example of lack of faith in the complete efficacy of the system. A case at Birmingham Assizes in 1908 revealed a similar reluctance to convict on the part of BIGHAM, J., who, although a burglar had left the imprint of one or more of his fingers on a champagne bottle and there were twelve identical ridge characteristics in the two sets of impressions concerned, nevertheless twice invited a jury to say that they were not satisfied. The jury nevertheless convicted. There is this to be said, not against the system, but against its application in individual instances, that only an expert can say positively whether a finger print is so similar to an earlier print that it must be from the same finger, or whether it is not so smeared as to be of doubtful validity. Cases must occur from time to time in which an expert witness does not command the confidence of a judge or a jury, and it is in the course of human nature that instances will occur in which an expert commands the confidence of a judge but not of a jury, and *vice versa*.

Recent Decision.

In *In re Suburban and Provincial Stores*, on 9th February, *The Times*, 10th February), BENNETT, J., dismissed a petition by a member of a newly formed committee of stockholders asking for the cancellation of the variation of stockholders' rights adopted at shareholders' meetings, on the ground that the petition, which was presented under s. 61 of the Companies Act, 1929, had not obtained within seven days of the meetings the written authority of 15 per cent. of the holders of the shares or stock whose rights were varied, as required by the section.

Production Injurious to Public Interest.

In our issue dated 12th September, 1942 (86 Sol. J. 266, 267), Mr. Harold Bevir, a valued correspondent, drew timely attention to certain difficult questions arising out of the speech of Viscount Simon, L.C. (which embodied the unanimous opinion of seven legal peers), in *The "Thetis"* case; *Duncan* v. *Cammell, Laird and Co., Ltd.* [1942] A.C. 624; 86 Sol. J. 287. The principles that could be collected from the speech are formulated in twelve propositions in an article under the heading: "Procedure in 1941" (86 Sol. J. 228). The essence of the decision is contained in the following sentence:—

> ". . . a court of law ought to uphold an objection, taken by a public department when called on to produce documents in a suit between private citizens, that, on grounds of public policy, the documents should not be produced" (at p. 632).

A valid objection on this ground is conclusive. The judge is not entitled to see the document in order to form his own opinion (at pp. 640, 642). The present judgment is limited to civil actions; the practice in criminal trials where life or liberty may be at stake, is "not necessarily the same" (at pp. 633, 634).

Mr. Bevir raises the following pertinent points with which we now have opportunity to deal in detail. We classify them for convenience of discussion—placing his last point first, as raising the paramount question of principle.

I.—*The power of deciding a legal point* is put "absolutely in the hands of the executive." The "sound and logical principle" would have been to permit the court to look at the document to see if privilege was properly claimed. The decision is regretted, as a "further extension of the growing practice of making our courts subservient to the bureaucracy."

II.—The principles cover "State documents belonging to the Crown," yet *police documents* are brought within that category (at p. 636). The police are municipal servants; the Crown simply makes a 50 per cent. efficiency grant.

III.—Do the principles cover "*other municipal or public servants*," e.g., the London Passenger Transport Board? Should not the evidence, e.g., of a bus conductor, come within the same ruling?

IV.—If the practice in criminal trials is "not necessarily the same," should not the practice in *applications under reg.* 18B, even though they are "civil actions," be equally excluded from the principles now affirmed?

I. The effect of the decision is to remove from the cognisance of the court documents which the department does not desire to produce. Despite the Lord Chancellor's advice to departments upon the sort of grounds that would not justify a refusal to produce, e.g., the desire to avoid parliamentary discussion or public criticism, or the tendency of the document to expose a want of efficiency, the refusal to produce must be sustained by the court; it can bring in its train no legal penalties, and it is difficult to see what political consequences may ordinarily follow. The decision follows the line, in effect, of reasoning in the *Liversidge* case (*Liversidge* v. *Anderson* [1942] A.C. 206; (1941), 85 Sol. J. 439), where the House held that the question whether the Home Secretary entertained that "reasonable cause" to believe which is the condition precedent to detention under reg. 18B, is not a "justiciable issue." Lord Atkin—as Lord Shaw had done in the last war in the *Zadig* case (*R.* v. *Halliday* [1917] A.C. 260, 280–307)—fought a valiant, but a lonely fight, in the cause of the power of the courts to test the existence of "reasonable cause" as an objective question of fact. The two cases are, of course, not parallel. The *Liversidge* case decided that it would be impossible for a judge to have at his disposal all the information available to the Home Secretary and his "background of statecraft" in order to decide whether a person should be detained under reg. 18B. In the present case, other considerations entered; the need to prevent an inquiry in public upon the instant question whether publication would be injurious to the public service (at p. 639 of [1942] A.C., citing the judgment of Pollock, C.B., in *Beatson* v. *Skene* (1862), 5 H. & N. 838, 853). On the other hand, it is interesting to speculate whether, if Lord Atkin had sat, he might have dissented. He was a member of the Judicial Committee which, in 1931, advised that the court was entitled to inspect a document for which protection was sought (*Robinson* v. *State of South Australia* [*No.* 2] [1931] A.C. 704, 716), a decision from which, in the present case, Viscount Simon dissented. (It is fair to add, however, that Lord Thankerton and Lord Russell of Killowen were parties to both decisions.)

A. Criticism by "Law Quarterly Review."

The decision in the present case has been severely criticised by the learned editor of *The Law Quarterly Review* (1942), 58 L.Q.R. 436–438. After pointing out that seven members sat to hear the appeal and that "the unusual course" was followed of delivering only a single judgment, prepared by the Lord Chancellor after "consultation with and contribution from" the other six peers, he observed:—

> "It is obvious that this case raises questions of the highest constitutional importance, for if a Minister of State can refuse to produce any documents he sees fit to claim are privileged, then the powers of the courts to do justice may be seriously curtailed if at any time the executive should assume an arbitrary position. This is all the more serious at a time when the activities of the State are rapidly increasing, and it is engaged more and more in ordinary mercantile transactions."

The *Liversidge* case, he continued, concerned the construction of a war-time order; the present was the more serious decision "which will have a permanent influence on the position of executive officers." The importance of the case does not lie in the finding of fact—for documents on the construction of the *Thetis* might have been of value to the enemy, and were, therefore, clearly privileged. Its importance lies in "the broad statement of principle." The objection to production which a department make take is "unlimited and extends to all documents which a public department considers ought not to be disclosed . . . for all practical purposes the executive is free to refuse production of any and all documents." The House followed *Earl* v. *Vass* (1822), 1 Shaw 229, to which Lord Thankerton had called attention, apparently after argument was concluded. (The application there was *ex parte*; there was one opinion, by Eldon, L.C.) It was unfortunate, observes the Note in the *Law Quarterly Review*, that no reference was made to Wigmore's "Monumental work on Evidence," which contains the most exhaustive treatment of the question of "State secrets."

On the second point in the case, that, once the objection is properly taken, the judge must treat it as conclusive, it is observed that the precedents were "evenly divided." In *The Zamora* [1916] 2 A.C. 77, 107, Lord Parker had said: "Those who are responsible for the national security must be the sole judges of what the national security requires." Upon which the *Law Quarterly Review* comments: "This may be true during the time of war and where matters of national security are concerned, but, with all respect, is it equally true in times of peace and when the matter of public interest is concerned not with national security but, for example, with the mismanagement of a wheat-marketing scheme as in the *Robinson* case?"

B. Contrary Reasoning in Robinson Case.

With the advice of the Judicial Committee in *Robinson* v. *South Australia State* (*No.* 2) [1931] A.C. 704, Viscount Simon, L.C., in the present case, did not agree. R had sued the State of South Australia claiming damages for negligence in the care of wheat placed, under certain statutes, in the control of the State. Privilege was claimed on behalf of the State, in the affidavit of a civil servant, for 1892 documents tied in three bundles and comprising inter-departmental communications. The responsible minister had exhibited a minute stating that disclosure would be contrary to the interests of the State. The Judicial Committee—Lords Blanesburgh, Warrington, Atkin, Thankerton and Russell of Killowen—held that the minute was inadequate. The minister's minute did not state the minister himself had considered each document. The court should exercise its power under the Australian rule of court—analogous to R.S.C., Ord. XXXI, r. 19A (2)—of inspecting the documents in order to decide for itself whether the documents should be protected.

Of *Beatson* v. *Skene* (1860), 5 H. & N. 838, counsel for the appellant contended that the decision was before the present extension in the commercial activities of governments. It was argued for the State, however, that the court has not, like the minister, such knowledge of the circumstances as enables it to decide the matter.

The privilege, said Lord Blanesburgh, relying upon Taylor, "Evidence," p. 939, is "a narrow one, most sparingly to be exercised." The foundation of the rule is that "the information cannot be disclosed without injury to the public interests and not that the documents are confidential or official, which alone is no reason for their non-production" (at p. 714 of [1931] A.C.). In view of the increasing extension of the State into commerce, the courts, "while they must duly safeguard genuine public interests, must see to it that the scope of the admitted privilege is not, in such litigation, extended" (*ibid.*). The fact that production of the documents might prejudice the case of the Crown or assist the other side does not justify a claim of privilege (at p. 716).

> "In truth the fact that the documents, if produced, might have any such effect upon the fortunes of the litigation is of itself a compelling reason for their production—one only to be overborne by the gravest considerations of State policy or security."

Upon the question whether the court has power to call for the documents and itself to determine the validity of the claim, Lord Blanesburgh declared that the court has always, in these cases, "had in reserve the power to inquire into the nature of the document for which protection is sought, and to require some indication of the nature of the injury to the State which would follow its production." In the time of *Beatson* v. *Skene*, any examination of a document would have had to take place in public; the mischief of such publicity was the ground for the acceptance of the Minister's word without inquiry. Moreover, a claim for privilege should be put forward under the sanction of the oath of a responsible Minister. It must appear that the Minister has himself *read and considered each* of the documents.

In *Duncan* v. *Cammell Laird & Co.*, Viscount Simon, L.C., agreed that the responsible Minister is the proper person to take the objection; that he must have read and considered each document; that, before the trial, the proper mode of objection is by affidavit; that during the trial, if the objection is then taken, the proper official may, for convenience, produce a document signed by the Minister, but that the court may request the personal attendance of the Minister. He took the view, however, that "the approved practice . . . is to treat a Ministerial objection taken in proper form as conclusive." Order XXXI, r. 19A (2), did not apply; privilege is for the protection of the litigant and may be waived; the non-production of documents whose production would be contrary to the public interest is "a principle to be observed in administering justice."

C. Contrary reasoning of Wigmore.

In s. 2375 of his work on "Evidence" (1905), Wigmore exhaustively considers *Privilege for Secrets of State and Official Communications.* The scope of the privilege had not yet been defined with certainty.

1. In actions against officials for *defamation contained in an official report*, the defendant had been held to be privileged from producing the defamatory writing—and thus was, in effect, exonerated from liability. Compare *Earl* v. *Vass*, concerning a letter to the Customs Commissioners upon the plaintiff's fitness to be nominated to a comptrollership of customs; cf., also, *Beatson* v. *Skene*, where the Secretary of State for War was privileged from producing letters and minutes of a court of inquiry defamatory of an army officer.

2. In actions against officials for *wrongs done by official acts*, the defendant has been privileged from disclosure (cf. *The Bellerophon*, 44 L.J. Adm. 5, where the commander's report to the Admiralty upon a collision was held to be privileged).

3. In several cases, *privilege of secrecy in general of official documents in an officer's possession* has been upheld, no question of international politics or military defence being involved (cf. *Wadeer* v. *E. Moi & Co.* (1856), 8 De G.M. & G. 182, 187, where discovery was refused of political documents passing between the defendants and the Indian Governments).

4. Disclosure has been refused of "'secrets of State' in *military or international affairs*" (cf. *R.* v. *Watson* (1817), 2 Stark 116, 148, where the court, in a trial for sedition, refused to allow a question to be put to a clerk in the War Department (who gave evidence that a plan found in the defendant's possession was a plan of the interior of the Tower), upon the accuracy of another and a purchasable plan of the Tower).

The reasoning advanced for the privilege may be summarised in two *dicta*. The first is of Pollock, C.B., in *Beatson* v. *Skene* (1860), 5 H. & N. 838, 853:—

> "If the production of a State paper would be injurious to the public service, the general public interest must be considered paramount to the individual interest of a suitor in a court of justice."

The second *dictum* is by Field, J., in *Henessy* v. *Wright*, L.R. 21 Q.B.D. 509, 512, where, in an action of libel, dispatches between the Governor of Mauritius and the Colonial Secretary were held to be privileged:—

> "There are two aspects of this question. First, the publication of a State document may involve danger to the nation. If the confidential communications made by servants of the Crown to each other, . . . in the discharge of their duty to the Crown, were liable to be made public in a court of justice, . . . an order for discovery might involve the country in a war. Secondly, the publication of a State paper may be injurious to the servants of the Crown as individuals; there would be an end of all freedom in their official communications if they knew that any suitor . . . could legally insist that any official communication, of no matter how secret a character, should be produced openly in a court of justice."

Upon this reasoning, Wigmore makes the following comments (vol. IV, p. 3340):—

1. That "an official should be secured from liability," based on communications made in the course of duty, is a question of substantive law. Where the law has declined to exonerate, the reason for protection ceases. "It is a mockery to reserve, against righteous claims, a privilege of testimonial secrecy."

2. For "secrets of State" in the narrow sense, e.g., "acts of pending international negotiations or military precautions against foreign enemies," there ought to be protection.

3. The question then becomes: are there any matters of fact, concerning "*solely the internal affairs* of public business" which ought to be privileged from disclosure? "Most emphatically there are not," he answers. "The responsibility of officials to explain and to justify their acts," he continues, "is the chief safeguard against oppression and corruption." In the last resort, the facts "must constitutionally be demandable . . . on the floor of Congress."

> "To concede to them a sacrosanct secrecy in a court of justice is to attribute to them a character which for other purposes is never maintained . . ."

It was urged in *Beatson* v. *Skene* that the public interest is paramount to the interest of an individual suitor.

> "As if the public interest were not involved in the administration of justice! As if the denial of justice to a single suitor were not as much a public injury as is the disclosure of any official record! When justice is at stake, the appeal to the necessities of the public interest on the other side is of no superior weight."

"Why this secrecy?" the learned author asks. "The solemn invocation . . . of a supposed inherent secrecy, has commonly been only a canting appeal to a fiction. It seems to lend itself naturally to mere sham and evasion." Thus, in *Beatson* v. *Skene*, a cavalry general, superseded, had resigned. An investigation into the state of the corps was made: the defendant reported to his superior that the plaintiff had stirred up mutiny, and afterwards, at a military court of inquiry into the libel on the plaintiff, gave evidence to this effect. The plaintiff subsequently sued for damages for libel and sought production of the minutes of the court of inquiry and of his own letters to the Secretary for War. The refusal of production of these documents virtually meant a denial of remedy to the plaintiff. The refusal on the ground that they were secrets of State was "to lay hold of the merest fiction"; the question was of the plaintiff's personal conduct; the subject had been the theme of gossip and was well known; a person who had been present at the court of inquiry was permitted to prove the testimony of the defendant that was recorded in the protected minutes. Protection in such a case is merely a "technical advantage" on the side of the official who is in possession of the important evidence. "No nation" (Wigmore is quoting from Livingston, a great American jurist) "ever yet found any inconvenience from too close an inspection into the conduct of its officers; but many have been brought to ruin, and reduced to slavery, by suffering gradual imposition and abuses which were imperceptible only because the means of publicity had not been secured" (*ibid.*, 3343).

"Who, in a given case, should determine the necessity for secrecy?" Wigmore continues. "Obviously, and by analogy with other privileges, the court," he answers (s. 2376, *ibid.*, p. 3345). There should be "a private perusal by the judge."

> "Is it to be said that even this much of disclosure cannot be trusted? Shall any subordinate in the department have access to the secret, and not the presiding officer of justice? Cannot the constitutionally co-ordinate body of government share the confidence? It is ludicrous to observe a chief magistrate, as in *Beatson* v. *Skene*, solemnly protesting his incompetence to share the knowledge of a fact which had never been secret at all and had for months been spread abroad by the hundred tongues of scandal."

Wigmore's conclusion is as follows:—

> "The truth cannot be escaped that a court which abdicates its inherent function of determining the facts upon which the admissibility of evidence depends will furnish to designing officials too ample opportunities for abusing the privilege. The lawful limits of the privilege are extensible beyond any control, if its applicability is left to the determination of the very official whose interest it is to shield his wrongdoing under the privilege. Both principle and policy demand that the determination of the privilege shall be for the judge" (*ibid.*).

He refers to *Aaron Burr's Trial*, Robertson I, 121; II, 536, where Marshall, C.J., had issued a *subpœna* to President Jefferson to bring into court certain correspondence with a general, said to be material to the defence in a trial for treason. Wigmore finally cites from a magnificent oration of Mondelet, J., in *Gregg* v. *Maguire*, 12 Low. Can. 33, 38 (upon the refusal of a provincial secretary to produce the report of a police superintendent), which concludes:—

> "Such a letter, if proved, injurious to the public service! In what respect? How could the fact that the respondent had libelled the appellant, supposing he has, be injurious to the public service? . . . It is manifestly laying down the rule that a secretary, or other public functionary, . . . will be at liberty to say that white is black, and that he must be believed" (at p. 3346).

It is interesting to note that Martin, B., did not agree with Pollock, C.B., Bramwell and Wilde, BB., in *Beatson* v. *Skene*, 5 H. & N. 838, 854. He thought that "whenever the judge is satisfied that the document may be made public without prejudice to the public service, the judge ought to compel its production, notwithstanding the reluctance of the head of the department." Pollock, C.B., significantly adds:—

> "And perhaps cases might arise where the matter would be so clear that the judge might well ask for it, in spite of some official scruples as to producing it; but this must be considered rather as an extreme case, and extreme cases throw very little light on the practical rules of life."

The decision of the House of Lords in *Duncan* v. *Cammell, Laird & Co.*, however, is clear and categoric, as far as civil actions are concerned, and it is difficult to see any possibility of "distinguishing" its reasoning or of modifying its comprehensive effect. The weighty objections of Wigmore, though they were never considered, must be regarded as overruled, as far as English courts are concerned.

[*Continued overleaf.*

[See also *Horne* v. *Bentinck*, 2 B. & B. 130, 162; *A.-G.* v. *Briant*, 15 M. & W. 169; *R.* v. *O'Connor*, 4 St. T. 935, 1050; and see Archbold, "Criminal Pleading" (1938), 30th ed., 484; Taylor, "Evidence," 1931, 11th ed., s. 608 *et seq.*; Roscoe, "Evidence in Civil Actions," vol. I, 1934, 18th ed., 175; Phipson, "Evidence," 1942, 8th ed., 181; Atkin, "Encyclopædia of Court Forms," vol. 8, pp. 48–54, and notes.]

(To be continued.)

A Conveyancer's Diary.

Acceptance of Trusts.

A NEW trustee is under an obligation to make sure, so far as he reasonably can do so, what is the fund which he is to hold and upon what trusts he is to hold it. The position is well stated in *Hallows* v. *Lloyd* (1888), 39 Ch. D. 686, where Kekewich, J., said, at p. 691, "I think that where persons are asked to become new trustees, they are bound to inquire of what the property consists that is proposed to be handed over to them and what are the trusts. They ought also to look into the trust documents and papers to ascertain what notices appear among them of incumbrances and other matters affecting the trust." Their duty is one to inquire with reasonable diligence. On the other hand, they are not liable for failing to give effect to interests the particulars in regard to which they could not find because they were not among the trust papers. That was the position in *Hallows* v. *Lloyd*, where trustees were held not to be liable in respect of interests created by a subsidiary instrument which was not among the papers, but whose existence was certainly known to the outgoing sole trustee of the main trust, since he was also sole trustee of the subsidiary trust. Obviously much will depend on circumstances and I think that the real test is of the same character as upon a sale of property where a purchaser is affected with notice of matters of which he has actual notice or constructive notice due to his not making as thorough inquiries as were in his power regarding matters in respect of which he is put on inquiry. That is not stated by Kekewich, J., in so many words, but it appears to be the idea underlying the general statement set out above and his application of it to the facts before him. It is to be noticed, incidentally, that the learned judge spoke of the duties of an incoming trustee as "onerous."

On the other hand there seems to be a definite limit on the lengths to which the court expects a new trustee to go with his inquiries. In *Phipps* v. *Lovegrove* (1873), L.R. 16 Eq. 80, at p. 90, James, L.J., said as follows: "It is said that the new trustees ought to have inquired of the old trustee whether he had received any notice of incumbrances, and that they had not made that inquiry, and therefore they are answerable because they would have had notice; assuming the old trustee to have been an honest man they would have been informed of the notice which he received. I am not aware that it is the practice of new trustees to inquire of old trustees whether they have received any notice or not, and I am quite sure this court has never done it. Yet it is said that it is a wrong thing for new trustees to accept trust funds in these circumstances without inquiring specifically whether the old trustees have received any notice of incumbrances—if that is a fault on the part of new trustees, it is a fault with which they have certainly been led by the example of the court; for I never heard of that being asked. I have made orders over and over again appointing new trustees and vesting the trust property in new trustees absolutely, without any dealing with the old ones at all." This rather strongly worded statement, read with *Hallows* v. *Lloyd*, appears to indicate that new trustees are expected to go thoroughly through the trust records and papers, and to make such inquiries as are suggested by what those papers contain, but that they are not under any obligation to make gratuitous inquiries not suggested by those papers.

In some cases the inquiries thus made will show that the accounts have been muddled or have been inadequately kept. Sometimes, indeed, there are hardly any proper records at all; at other times the accounts may have been kept in a way only really intelligible to trustees or a trustee who are dead; sometimes one may find that small sums of money have failed to be reinvested; and so on. Every practitioner will be able to think of cases in his own experience where something of the sort has occurred. And in the worst type of case, of course, part of the fund has been actually lost or misapplied. It seems quite clear that if new trustees have notice of any such defect or irregularity it is their duty to put it right. The proper procedure in such cases is indicated in *Bennett* v. *Burgis* (1846), 5 Hare 295. From that case it seems clear that the correct course is not, as may sometimes be suggested, to execute a deed which purports to appoint trustees only of such of the fund as is available to be transferred to the new trustees. Trustees are either trustees of the trust itself or they are not. If they are trustees of the whole trust, it is, *prima facie*, their duty to collect any missing amounts either from the old trustees or from whomsoever else is available. Often, however, such a course is, on the facts, not practical or convenient. Where that is so the right way is for the new trustees to be appointed in respect of the whole trust fund and for them then to take out an originating summons asking for directions whether they shall take any, and if so what, steps to collect what is missing. No doubt the question may be so framed as to be one expecting the answer, "No." Where a case is made out that collection would be impracticable or inexpedient, the court can direct the new trustees, as it did in *Bennett* v. *Burgis*, that, "it is not fit or proper" for any further steps to be taken. Such an order will, of course, be a complete protection to the new trustees in maintaining a state of quiescence. The report of *Bennett* v. *Burgis* contains a full statement of the order which was there made, which is worth the notice of any who may have this particular difficulty to deal with. I recently had occasion to search for the form of such an order and was unable to find it elsewhere.

Landlord and Tenant Notebook.

Intention to Create Tenancy.

IN the "Notebook" of 8th August last (86 SOL. J. 222), I had occasion to discuss a decision of the learned judge of Wandsworth County Court, in which it was held that a local authority had not granted a tenancy to certain victims of air raids whom it had housed pursuant to the Defence Regulations. That this is not the only way in which such enemy action may occasion a dispute of that nature has now been demonstrated by the case of *Booker* v. *Palmer* (1942), 87 SOL. J. 30 (C.A.).

The facts in this case were that soon after a raid a friend of the victims (a mother and daughter) rang up one L, a landowner in the country, and asked whether he could "give" one of his cottages to them. He said they could have one rent free for the duration of the war. They took possession accordingly. Some time later L was constrained by the local county war agricultural committee to grant a lease of part of his land, including the cottage, to the plaintiff in the action. In this lease L stipulated that he should not be bound to give vacant possession of the cottage. However, the plaintiff claimed possession in a county court action brought against the daughter (the mother having died). The defendant pleaded that the friend who had telephoned L was his tenant of the cottage for the duration of the war, and that she (the defendant) was that friend's tenant or else that friend's licensee. The county court decided that there was no evidence of any tenancy between L and the common friend, and the defendant appealed.

It will be observed that though in the telephone conversation by which the arrangement was made the friend appears to have acted or been treated as agent, the defendant's case did not include any allegation of privity of contract between herself and the plaintiff. She did not suggest that he had acquired his interest subject to the burden of a tenancy or licence granted to her by L. Her defence implied that she was either his sub-tenant or his tenant's licensee. Whether the alleged (mesne) tenant gave evidence in the county court, and, if so, what she deposed, is not stated.

Upholding the county court judge's finding and judgment, Lord Greene, M.R., pointed out that whether or not parties intended to create between themselves the relationship of landlord and tenant must in the last resort be a question of intention. The law did not impute intention to enter into legal relationships where the circumstances and conduct of the parties negatived any intentions of the kind. It would be difficult to infer such intention from a casual telephone conversation. L's charitable intention to allow the evacuees to remain in the cottage for the duration of the war, and his refusal to give the plaintiff vacant possession, which showed that he was anxious to carry out his promise, did not warrant an inference that the relationship of landlord and tenant had come into existence.

Though one might criticise the learned Master of the Rolls' characterisation of the telephone conversation as a "casual" one, the statement of the general rule is of course unexceptionable. (I think the stock example at lectures on the law of contract is the unenforceability of an invitation to dinner.) But it would be difficult to find past illustrations of its application the circumstances of which in any way resemble those before the court. The plaintiff may have invoked *Doe d. Pritchard* v. *Dodd* (1833), 5 B. & Ad. 689, in the course of which Parke, B., said: "It is true that any words which express the intention of giving possession for a certain time may, in construction of law, amount to a lease"; but the short answer would be that "may" does not mean "must": furthermore, the statement was an *obiter dictum*, the question at issue actually being for whose life a particular lease had been granted. In the older case of *Hall* v. *Seabright* (1669), 1 Mod. R. 14, there is an equally wide statement made by Twisden, J., whose learned colleagues of the King's Bench concurred: "If one doth license another to enjoy his house till such a time, it is a lease." But the court was dealing with a demurrer by a plaintiff who had sued for trespass by entering his house, the defendant pleading *inter alia* that he had a licence to occupy it till a named date "*si defendens voluerit.*" The plaintiff's objection was that the defendant was setting up a lease, and there could not be a lease at the will of one, and the court did say that the defendant should have pleaded a lease;

but the events, which happened so long before total war was dreamed of, are somewhat remote from those of *Booker* v. *Palmer*, apart from the circumstance that in the recent case the defendant was relying on a grant to a third party who was not personally to enjoy the cottage.

The "charitable intention" of L may well have been a more formidable obstacle than the casualness of the conversation. Cases in which such intention, or anything like it, have been an element are hard to find. In *Harris* v. *Tremenheere* (1808), 15 Ves. 34, motives did play a part; but that was a case of equitable proceedings to set aside some leases. The plaintiffs were the children of a deceased landowner, who, they alleged, being ignorant of business and suffering from gout, had been wrongly influenced by the defendant to grant those leases on terms highly favourable to the defendant, who was his attorney and steward. Some of the leases had been granted for the life of the lady whom the defendant was to marry and had since married. It will be found that Lord Eldon's judgment makes sundry references to the unimportance of motive. For example, "As to the delicacy of the transaction, courts of justice have nothing to do with these considerations of imperfect obligation." And one lease is described as ". . . a lease which an agent, steward, and attorney takes from his client, master and employer, in the grant of which . . . this court cannot permit any motive of kindness and gratitude to be mixed."

Having held that there was no intention to create a tenancy, the court considered it unnecessary actually to decide whether the defendant had been the plaintiff's licensee; for, if she were, this was not one of those cases in which a licence could not be revoked.

The case bears some resemblance to the county court case previously discussed, in that the subject-matter of the claim was premises occupied by "bombed-out" persons in consequence of their so becoming homeless. It is, of course, plausible that people in such a position do not readily consider whether they are becoming tenants or licensees or what—and in his judgment in *Booker* v. *Palmer* Lord Greene, M.R., referred to the relationship of landlord and tenant as a "special relationship."

Correspondence.

War Damage Contribution—Tenant for Life.

Sirs,—We have been considering the question of the incidence of War Damage Contribution as between a tenant for life and remainderman.

It appears to us that a distinction may have to be drawn between the four cases mentioned below, and we actually have a will case which includes all four of the alternatives, viz.:—

(*a*) A gift by the testator of real property to A for life, and thereafter upon the trusts of his residuary estate (which latter trusts include a trust for sale);

(*b*) A gift by the testator of real property to his trustees upon trust to permit A to occupy the same during her life, and thereafter upon the trusts of his residuary estate as above;

(*c*) A gift by the testator of real property to his trustees upon trust to let and manage the same with all the powers of an absolute owner (but the will does not in this case contain any express trust for or power of sale by the trustees) and to pay the rents to A for life, and thereafter upon the trusts of his residuary estate as above;

(*d*) A gift by the testator of his residuary real estate to his trustees upon trust for sale (with power of postponement) and to pay the income to A for life, with remainder to B, C and D equally.

In some cases the property concerned is of leasehold tenure, but this does not appear to affect the questions we wish to raise, except that the incidence of liability as between tenant for life and remainderman will, in those cases, be concerned only with that proportion of the War Damage Contribution which, as between lessor and lessee, is payable by the latter.

Under s. 23 of the War Damage Act, 1941, the person primarily liable for an instalment of War Damage Contribution is the owner of the proprietary interest at the material date. It appears to us that gifts in the nature of those described in paras. (*a*), (*b*) and (*c*) above are such as to make the property settled land under the Settled Land Act so that the tenant for life is entitled to have the legal estate vested in him under a vesting assent (although in the case of the will now being considered, this step was never taken). As the owner of the legal estate, therefore, we feel the tenant for life should bear the War Damage Contribution. Under para. (*d*) the legal estate will remain in the trustees, who should therefore pay the War Damage Contribution out of capital.

Such is our opinion, and we are unable to see how (if at all) the position under paras. (*a*), (*b*) and (*c*) is affected by s. 82 of the War Damage Act, which provides that War Damage Contribution is a capital payment.

We should be interested to learn the views of your Editor and of your readers.

London, E.C.3. SAYLE, CARTER & CO.
11th February.

Our County Court Letter.

Maintenance of Lace Machinery.

IN *Newton & Pycroft, Ltd.* v. *Pilsworth*, heard at Nottingham County Court, the claim was for £173 14s. 5d. in respect of the maintenance of machinery at the defendant's lace factory. The plaintiffs' case was that the test of the proper charge was: What was the market value of the job? What price would other firms have charged for the same job? If other firms made similar charges, the plaintiffs' charge was not excessive. There was no analogy between the plaintiffs' trade and other trades. The plaintiffs' workmen required special tools, and the value of the defendant's plant was estimated at £100,000. There was no difference in the basis of charges, but it was conceded that, while the proper charge for bobbing was 8s., a quotation of 6s. had previously been given. Accordingly an allowance of £3 8s. 1½d. was due to the defendant. The defence was that the amount claimed was exorbitant. The practice of tripling the workmen's wages had apparently been followed, and this was not a fair basis for the charge to be made. The defendant had already paid 100 per cent. over the cost of labour, and the plaintiffs were merely taking advantage of the labour shortage in charging another 200 per cent. His Honour Judge Hildyard, K.C., gave judgment for the plaintiffs for £170 with costs.

Companies Winding-up.

IN a case at Coventry County Court (*In re Black Horse Engineering Co., Ltd.*) a petition for winding-up was presented by the managing director. The petitioner's case was that the company had a garage business, and was indebted to him in the sum of £2,746. A writ had been issued and served on the company, which had also been served with a notice under the Companies Act, 1929, s. 169 (1). The effect of the latter was that the company was deemed (in default of compliance) to be unable to pay its debts. There was also a further liability to the petitioner of £1,000 in respect of stock. An adjournment was, however, applied for, in order to enable the petition to be amended, viz., by including a claim by the petitioner to be allowed access to the company's books, as he had been excluded from the company's premises. It was also desired to adjourn the hearing in order to enable the petitioner to claim as a judgment creditor. On behalf of the company, the application to adjourn was opposed. It was held that no case for an adjournment had been made out. The company's case, in answer to the petition, was that it had a set-off of £2,623. His Honour Judge Forbes observed that the High Court action might result in a decision that the petitioner was entitled to far less than he alleged, or even to nothing at all. The petition was therefore premature. Moreover, the claim to be allowed access to the company's books was made in the petitioner's capacity as a contributory. No order to that effect could be made on his petition as a creditor. His position as a creditor, however, was not yet established. The petition was accordingly dismissed, with costs.

Possessory Title.

IN *Horsley* v. *Margetts*, at Wellingborough County Court, the claim was for £10 as damages for trespass, and an injunction to restrain the defendant from continuing to exclude the plaintiff from an outbuilding in the yard of his premises in the Market Square, Higham Ferrers. The plaintiff's case was that he took the premises on lease in 1910 from Earl FitzWilliam, who, in June, 1914, sold the freehold to the plaintiff. The plan on the conveyance showed the outbuilding as being part of the plaintiff's property. The plaintiff continued in occupation of the property, including the outbuilding, until 1928. In that year the defendant's husband claimed the outbuilding, in reliance upon the plan in a conveyance to himself in January, 1914, from Earl FitzWilliam. It appeared that a mistake had been made, as the outbuilding was comprised in both conveyances. In 1928 the plaintiff accordingly gave up part of the outbuilding, but retained the other part, which was a water-closet. In 1941 the defendant bricked up the entrance to the water-closet, to which access had always been obtained by the plaintiff and his tenants and shop assistants, across the yard of his premises. There never had been any access to the water-closet from the defendant's premises. It was contended that, in spite of the defendant's earlier conveyance, the plaintiff had been in adverse possession of the water-closet from June, 1914, until 1928. A possessory title had thus been acquired under the Real Property Limitation Act, 1874, by reason of the defendant permitting the plaintiff to remain in uninterrupted possession for twelve years. This period had expired in 1926, when the plaintiff's title was complete. The defendant's case was that the reason her property had been bought by her husband was to acquire the outbuilding in order to straighten the boundary of their property. The water-closet had been derelict for many years, but had always been under the supervision and control of the defendant, who used to cut off the water supply in the winter. The possession of the plaintiff had never been adverse to the defendant, who asserted her title in 1941 on discovering that the plaintiff had installed a new cistern without her permission. His Honour Judge Galbraith, K.C., gave judgment for the defendant, with costs.

To-day and Yesterday.

LEGAL CALENDAR.

February 15.—On the 15th February, 1786, William Shaw Hines was hanged at Execution Dock for piratically seizing the revenue cutter "Swift" off the Essex coast. "He behaved with that decency that became his untimely end. The silver oar was carried before him, attended with the other Admiralty officers." He was a smuggler and his yawl had been chased and boarded by the "Swift." But while his cargo was being seized he found that his men were superior to the customs officers, took control of the cutter, made for the open sea and put them into a small boat leaving them to shift for themselves.

February 16.—On the 16th February, 1793, Lord Chief Justice Kenyon "laid down an important rule for the regulation of the conduct of attornies. His lordship said he verily believed that the majority of attornies were honourable men and of service to the community, but there were many others who were the greatest pests to society. He desired attornies to take notice that they were bound to give their clients the best advice in their power and to conduct the causes entrusted to them as if they were their own. If an attorney instead of honestly and fairly advising his clients advised them to prosecute groundless or frivolous actions for the sake of costs all such attornies would be compelled to pay the expenses themselves. This rule alarmed several attornies who were present, but was applauded by the counsel as replete with wisdom and justice."

February 17.—In his delightful book on "The Old Munster Circuit," Mr. Maurice Healy tells how Lord Chief Baron Palles was "appointed by Gladstone on the platform of Paddington Station as he went down to Windsor to surrender the seals of office on February 17th, 1874. Criticism is frequently directed at a Government that exercises its patronage when *in extremis*. If vice this be never did fault more remarkably burgeon into virtue. For the next forty-four years Christopher Palles was a pattern of all that is great and good; no word could be written in his praise that would be extravagant. In the last decade of his life he was summoned specially to London to sit at the Board of the Privy Council and English and Scottish law lords found out for themselves that his almost mythical reputation was well earned."

February 18.—Now and then it is suggested that the revival of Acts of Attainder would provide a good means of dealing with offenders in high places. Effective it certainly was as in the case of George, Duke of Clarence, "false, fleeting, perjured Clarence." In January, 1478, his brother, Edward IV, laid before Parliament the charges against him: slandering the King, receiving oaths of allegiance to himself and his heirs, preparing a new rebellion. The bill of Attainder was passed by both Houses, and in the sequel he met his death in prison on the 18th February, 1478. Shakespeare has immortalised the tradition that he was drowned in a butt of malmsey wine in the Tower of London.

February 19.—In 1834 a serious attack on the privileges of the serjeants-at-law was made, when a royal mandate was issued purporting to abolish their exclusive right of practising in the Court of Common Pleas. The serjeants resisted the assault, contending that nothing short of legislation could effect such a change. It was not till 1840 that the matter was finally argued before the court, and then Chief Justice Tindel found in their favour. On the 19th February, 1841, Messrs. Manning, Holcomb, Channell, Shee and Wrangham were admitted to the degree of the coif and the customary rings which they presented bore the triumphant motto: "*Honos nomenque manebunt.*" The victory was brief. Five years later a short statute accomplished what the royal warrant could not.

February 20.—On the 20th February, 1733, two brothers named Hallam, highwaymen, were brought to Lincoln Gaol charged with killing a young man found murdered in a chaise near Market Rising. "On entering Lincoln, they were treated with the utmost ignominy and reproach. One of them was for murdering all they attacked and, when taken, upbraided the other with hindering him from doing it, as the chief cause of their being apprehended. They had forced a post boy on the road to blow his horn, then told him it was his death peal and immediately cut his throat and that of his horse. The post boys greeted them as they passed through Lincoln in the like manner, sounding their horns, on which one of them wept." Both were hanged.

February 21.—On the 21st February, 1823, four men convicted of keeping a gaming house at No. 5, St. James's Street were brought up for sentence in the Court of King's Bench. They had run the establishment on a grand scale. Visitors had to pass through several doors strongly secured before they reached the rooms for play, which were fitted up with extraordinary elegance and luxury. Wine, spirits and every kind of refreshment were provided gratis. The heaviest sentence was on Charles Rosier: a fine of £5,000 and a year's imprisonment.

Mr. Arthur Thompson Longbotham, M.B.E., J.P., retired solicitor, of Halifax, left £30,881, with net personalty £28,352.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Will. Construction. "Issue."

Q. A, by her will, gave the residue of her estate equally between B and C, and directed "that in case any legatee named in my will shall die during my lifetime leaving issue such issue shall be entitled to and take their parent's legacy or share and if more than one equally amongst them." A died in February, 1942. B died in 1934, leaving three children who are still alive, a fourth child having died in 1933, leaving two children who are still alive. Will the grandchildren of B take one-fourth of their mother's share and the other three children take the remaining three-fourths? Our own opinion is that the two grandchildren are classified as "issue" of the testatrix, and will therefore be entitled to share in the residue.

A. We are not in agreement with our subscribers. We suggest that the use of the word "parent" restricts the meaning of "issue" to "children." Further a child of B would not be a legatee *named* in the will. On this basis the three living children of B will divide their mother's share equally, but the two grandchildren will not participate.

Conveyance to one as trustee for another—TRUST NOT ON FACE OF CONVEYANCE—DECLARATION OF TRUST TO SELL AND DISCHARGE MORTGAGE BY DEPOSIT AND HOLD BALANCE FOR TRUE OWNER—DEATH OF TRUSTEE—ASSURANCE TO TRUE OWNER THE EQUITABLE CHARGE STILL SUBSISTING.

Q. X purchased Blackacre on behalf of Y, and the purchase money was provided in part by Y and in part by a friendly mortgagee, Z. The property was conveyed to X, who thereupon deposited the deeds with a memorandum of deposit in favour of Z and signed a declaration of trust that he (X) held the property in trust for sale to discharge the mortgage by deposit and to hold the balance of proceeds in favour of Y. X has now died, and Y requests X's executors to convey the property to him subject to the equitable charge. Is the correct procedure for the charge to be temporarily discharged and for the executors of X (having been called upon by Y to convey to him) so to convey the property and for Y then to mortgage again by deposit?

A. We consider the suggested procedure eminently satisfactory.

Books Received.

Preston and Newsom's Limitation of Actions. Second Edition by G. H. NEWSOM, of Lincoln's Inn, Barrister-at-law. 1943. Demy 8vo. pp. xlviii and (with Index) 318. London: The Solicitors' Law Stationery Society, Ltd. £2 net.

Burke's Loose-leaf War Legislation. Edited by HAROLD PARISH, Barrister-at-law. 1942 Volume. Part 12. London: Hamish Hamilton (Law Books), Ltd.

Obituary.

HIS HON. JUDGE KENNEDY, K.C.

His Honour Judge Kennedy, K.C., died suddenly on Wednesday, 10th February, aged sixty-four. An appreciation appears at p. 59 of this issue.

CAPT. S. B. COHEN.

Capt. Stephen Behrens Cohen, barrister-at-law, died recently in India, aged thirty-two. He was educated at Eton and King's College, Cambridge, and was called by the Inner Temple in 1934. Early in 1939 he received a commission in the 4th Battalion, The Royal West Kent Regiment, and on the outbreak of war was transferred to the 6th Battalion. At the end of 1941 he left England to join the Indian Army. He was appointed to the Sikh Regiment and later to the staff of the Upper Sind Force.

MR. L. B. TILLARD.

Mr. Laurence Berkeley Tillard, barrister-at-law, died on Friday, 12th February. He was called by the Inner Temple in 1914.

MR. H. COLLINGS.

Mr. Harry Collings, solicitor, of Messrs. Field, Cunningham and Co., solicitors, of Manchester, died recently, aged fifty-nine. Mr. Collings was admitted in 1913.

CORRECTION.

In the "Recent Decision," *Att.-Gen. of Alberta* v. *Att.-Gen. of Canada and Others*, published at p. 53 of last week's issue, it was stated that the Judicial Committee of the Privy Council held that the Debt Adjustment Act, 1937, of Alberta, as amended in 1941, was not *ultra vires* the legislature of Alberta. This was an error, for which we apologise, and the words should have been "held that the Debt Adjustment Act, 1937, of Alberta, as amended in 1941, was *ultra vires* the legislature of Alberta."

Notes of Cases.

CHANCERY DIVISION.

In re **Rothermere; Mellors, Basden & Co. *v.* Coutts & Co.**

UTHWATT, J. 22nd January, 1943.

Administration—Covenant to pay £12,000—Provision that if sum unpaid at covenantor's death it was to "constitute a first charge on" his estate—Effect of provision.

Adjourned summons.

By an agreement dated the 9th May, 1940, made between R and the applicant, the applicant, who was an employee of R, agreed to serve R for a further period of five years. R agreed to pay to the applicant, in addition to his salary, the sum of £12,000 within ten years from the date thereof but without interest. It was further provided by cl. 4 that in the event of R dying "without having effected the said payment the said sum of £12,000 shall become immediately due and shall constitute a first charge on the estate of R." On the 26th November, 1940, R died without having paid the sum of £12,000. An administration action having been started, the applicant took out this summons in the action asking for a declaration that he was a creditor for £12,000 and entitled to a first charge for that sum on the estate.

UTHWATT, J., said that the first question he had to decide was the meaning of cl. 4. That clause appeared to create, apart from any considerations arising under the Bills of Sale Act, an equitable charge on this estate. He had no doubt that, as a matter of law, it was competent to a person to create such a charge. The whole of the assets were defined. They were all the assets which a person possessed at a particular point of time. The next question was whether, upon the true construction of the agreement, such a charge had been created. Clause 4 appeared ambiguous. It was capable of meaning that the whole of the assets of R were charged with the payment of £12,000. It was also capable of meaning that the £12,000 was to be a first charge in the administration of the estate, i.e., that the debt was to be paid before the other debts in the administration of this estate. In considering the proper construction, he was entitled to rely upon a general rule of long standing that "where by acting on one interpretation of the words used we are driven to the conclusion that the person using them is acting capriciously, without any intelligible motive, contrary to the ordinary mode in which men in general act in similar cases, there, if the language admits of two constructions, we may reasonably and properly adopt that which avoids these anomalies, even though the construction adopted is not the most obvious, or the most grammatically accurate. But if the words used are unambiguous, they cannot be departed from merely because they led to consequences which we consider capricious or even harsh and unreasonable" (*Locke* v. *Dunlop*, 39 Ch. D. 393, *per* Stirling, J.). In this case it was ridiculous to assume that any person would set out to create a charge which was going to attach to every asset in the hands of his legal personal representatives. The existence of such a charge would render it improper for the executors to alienate or dispose of any asset, unless they had first paid off the creditor in question. Now, could that have been intended? In his opinion, no. The other construction was reasonable. There was no charge. There was a direction that in the administration the debt was to be paid first. That direction was inoperative as the Administration of Estates Act, 1925, provided for the order in which a persons' debts were to be paid and no agreement by the debtor with his creditors as to the order was of any use. The effect of the deed was that no objection could be taken under the Bills of Sale Act, and the applicant was entitled to be admitted as a creditor of the estate.

COUNSEL: *C. E. Harman*, K.C., and *C. V. Rawlence*; *Wilfrid Hunt*; *R. F. Roxburgh*, K.C., and *E. M. Winterbotham*.

SOLICITORS: *Claremont, Haynes & Co.*; *Roney & Co.*; *Radcliffes & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Trusts affecting Scheduled Investments; Perch *v.* Robertson.**

Uthwatt, J. 2nd February, 1943.

Settlement—Destruction by enemy action of indenture of settlement and trust documents—Application to court to declare trusts affecting trust fund—Form of order.

Adjourned summons.

This summons was taken out by the plaintiff for the determination of the question whether the investments specified in the schedule to the summons were held upon the trusts specified in the summons or on some other and what trusts. It appeared from the evidence that a settlement dated the 2nd April, 1891, had been executed on the marriage of the plaintiff. That settlement and all the trust documents had been destroyed by enemy action on the 10th May, 1941, when the premises of the solicitor to the trust had been burnt out. The solicitor had no recollection of the terms of the settlement. The defendant, the sole surviving trustee of the settlement, also could not remember any details of the trust beyond the fact that the trust property consisted of the scheduled investments and that the income was payable to the plaintiff for her life. The only evidence of the trusts was contained in a recital in a will drawn on the plaintiff's instructions in 1933. The draftsman of that will have seen the settlement and it appeared from that recital that, in the event of there being no children of the plaintiff's marriage, the trust fund was to be held after the death of the survivor of the plaintiff and her husband in trust for such one or more of the plaintiff's brothers and sisters, who should be living at the death of the survivor of herself and her husband or at the determination of any interest appointed to a future husband of hers, and of the children then living of any deceased brothers or sisters of hers and in such shares and proportions as she should appoint. The defendant wished to retire from the trusts, but it was not possible to find a trustee to act in his place unless the trusts on which such investments were held were known. The plaintiff sought, in effect, a declaration that the trust funds were held on the trusts recited in the will. There had been no children of the plaintiff's marriage. The trustee was the only defendant to the summons.

UTHWATT, J., said that he would not make an order declaring the trusts which would appear to bind all persons interested. He was satisfied that the scheduled investments were subject to the trusts of the settlement; that the plaintiff was entitled to a life interest therein, and that, in default of children of the marriage, the investments were held upon the trusts set out in the recital. In those circumstances, he would make an order that until further order the defendant, or other the person for the time being appointed to act as trustee of the settlement, was entitled to hold and deal with the investments specified in the schedule to the summons upon the footing that the trusts affecting the same were the trusts set out in the summons as altered by his direction. Costs out of the fund.

COUNSEL: *J. A. Wolfe*; *Fawell*.

SOLICITORS: *Williams, Hill & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Arbon *v.* Anderson and Others; De Lassoe *v.* Anderson and Others.

Goddard, L.J. (as additional Judge). 11th December, 1942.

Emergency law—Detention under Defence (General) Regulations, 1939—White Paper of instructions as to treatment of prisoners—Alleged breaches of instructions and of prison rules—Whether breach of statutory duty giving rise to cause of action—Defence (General) Regulations, 1939 (S.R. & O., No. 927), reg. 18B—Prison Act, 1898 (61 & 62 Vict. c. 41), s. 2.

Actions for damages against successive Secretaries of State and the governors of certain prisons in respect of the treatment received by the plaintiffs while detained in prison by virtue of orders of detention made under reg. 18B of the Defence (General) Regulations, 1939. Regulation 18B gives the Secretary of State power to order the detention of certain classes of persons and provides that he shall direct where such persons shall be detained and that they are to be detained in accordance with instructions issued by him. In January, 1940, certain instructions were issued in the form of a White Paper, which by His Majesty's command was laid before Parliament. His lordship found that, contrary to these instructions, there had been some lack of facilities for association between internees as well as some other grounds for complaint, that the prison governor had always tried to act with consideration in difficult circumstances, and that there had been no breach of the prison rules.

GODDARD, L.J., said that in his opinion the White Paper contained nothing more than administrative departmental instructions, which did not, and were not intended to, confer any rights on prisoners. There was no obligation on the Secretary of State to communicate them to Parliament, still less to the prisoners. They could be altered or withdrawn at any time. The matter was left to the discretion of the Secretary of State. With regard to the prison rules, it would be enough to say that he found that there were no breaches. But in case a higher court should take a different view, his opinion was that these rules did not confer rights upon prisoners which could be enforced by action. They were made under s. 2 of the Prison Act, 1898, for the government of prisons. The question as to when the breach of a duty imposed by statute confers a right of action on an individual depended on the scope and language of the Act creating the obligation, and on considerations of policy and convenience (see *Pasmore* v. *Oswaldtwistle Urban District Council* [1898] A.C. 397). Whether the Act provided for a penalty or whether some special tribunal was set up to deal with matters arising under the Act were matters, no doubt, to be taken into account in determining whether a cause of action was also given, and might be the determining factor, but neither the presence nor absence of such provision was conclusive. His lordship was clearly of opinion that neither the Prison Act nor the rules were intended to confer any such right. It was significant that there was no trace of any action based on alleged breaches of prison rules ever having been brought in this country unless *Cobbett* v. *Grey*, 4 Ex. 729, and *Osborne* v. *Milman*, 17 Q.B.D. 514, were to be so regarded, though in his opinion they were clearly distinguishable. The former case related to imprisonment in the wrong place in breach of a rule having the force of a statute, and this was held to be a trespass, in spite of a vigorous dissenting judgment by Pollock, C.B. The latter case related to alleged treatment of a person imprisoned on civil process as a criminal prisoner, and a judgment for damages was reversed on appeal on the ground that he was rightly treated as a criminal prisoner. But both these cases related to the nature of the imprisonment. Here the prisoners were lawfully imprisoned and the questions related to the conditions of their imprisonment. The nearest case was *Gibson* v. *Young*, 21 New South Wales Rep. 7, in which no action was held to lie against the Government at the suit of a prisoner for damages for injuries caused by the negligence of a prison officer. The basis of the decisions was public policy, and the reasoning was directly applicable to the present case. It was not necessary to decide whether, if a person sustained personal injury through an act of negligence of a prison officer he could bring an action. It was impossible to say that he could maintain an action if he could prove some departure from the prison rules which caused him inconvenience or detriment. The actions would be dismissed with costs, and as the defendants were public officers and were sued in respect of their official duties, the taxation must be between solicitor and client.

COUNSEL: *G. O. Slade*; *Aiken Watson*; *J. M. Williamson*; *The Attorney-General* (Sir Donald Somervell, K.C.); *The Solicitor-General* (Sir D. Maxwell Fyfe, K.C.); *Valentine Holmes*.

SOLICITORS: *Oswald Hickson, Collier & Co.*; *The Treasury Solicitor*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Luccioni *v.* Luccioni.

The Right Hon. The President. 2nd February, 1943.

Divorce—Husband in France shortly after outbreak of war—Not heard of since—Desertion alleged—No evidence of respondent's knowledge of petition—Leave to dispense with service of petition refused—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 42.

Application under s. 42 of the Matrimonial Causes Act, 1857, by a wife petitioner for divorce on the ground of desertion by the respondent for leave to dispense with service of the petition on the respondent.

The petition was dated 21st October, 1942, and alleged desertion as from about October, 1936, when, it was alleged, the husband left the petitioner against her will, having announced his intention of leaving her and going to Morocco or to France, saying that he was not going to ruin his life by living with her any more. In the affidavit in support of her application the petitioner alleged that the respondent went to Paris and that she ascertained his address and verily believed that he was still living at that address shortly after the outbreak of war between the United Kingdom and Germany; but that since then she had received no communication from him nor from anyone on his behalf, in spite of inquiries through the Red Cross and St. John's War Organisation. At the time of marriage in 1934 the husband was resident in London, but his father was a Frenchman, his domicile of origin was in France, and the petitioner alleged that he was a French national. The German Government refused during the war to allow legal process to be communicated in any form to parties resident in Germany or German-occupied territories, so that no effective form of substituted service could be devised.

LORD MERRIMAN said that the petition could have been presented in October, 1939, in which case there would have been no difficulty in effecting substituted service, but he did not propose to base his decision on so narrow a point, as an important question of principle was involved. There was nothing novel in 1857 in legislation giving power to dispense with service. His lordship referred to s. 17 of the Common Law Procedure Act, 1852, Ord. IX, r. 2, of the First Rules of the Supreme Court (Wilson's Judicature Acts, 1875 ed., at p. 175), r. 10 of the Rules and Orders of 1858, made under the Matrimonial Causes Act, 1857, *Parker* v. *Parker and Macleod*, and *Cooke* v. *Cooke*, 5 Jur. 103, and *Worth* v. *Worth* (Searle and Smith's Monthly Reports of Cases in Probate and Divorce), and expressed complete agreement with the judgment of Henn Collins, J., in *Read* v. *Read*, 86 SOL. J. 341. His lordship said that so far as he was aware, the only instances during the present war in which an order had been made under the section dispensing with service on a respondent who was at the time in Germany or German occupied territory were, first, in the case of a wife who had already obtained a decree of separation at a time when the husband was in this country and sought to extend this relief to dissolution on precisely the same grounds under s. 6 (1) of the Matrimonial Causes Act, 1937; and, secondly, in a case where the respondent had already obtained a decree of divorce in the German court. Neither of these cases was reported. In his lordship's opinion, in the case of petitions which involved a change of status, and where any form of substituted service was impossible, the court, before dispensing with service, should require to be satisfied that the respondent spouse had become aware of the fact that the petition was being prosecuted, or at the very least, of the intention to prosecute it, and in either case had had time and opportunity to indicate whether he or she desired to defend. Whether this requirement was satisfied would be decided upon the merits of the individual case. It might be that in the case of a petition which, as between the spouses, did not involve a change of status, or of the service of a petition for divorce on a co-respondent against whom neither damages nor costs were claimed, or, upon a woman named in a wife's petition, some relaxation might be permissible, and the same might apply to subsequent applications for ancillary relief arising out of a petition which had been duly served. On the facts of the present case his lordship was not prepared to make an order dispensing with service of the petition altogether. The summons would be dismissed.

COUNSEL: *Geoffrey C. Tyndale* and *Miss Morgan Gibbon.*

SOLICITORS: *Spiro & Steele.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1943.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.			EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice FARWELL
Monday,	Feb.	22	Mr. Andrews	Mr. Hay	Mr. Reader
Tuesday,	,,	23	Jones	Reader	Blaker
Wednesday,	,,	24	Hay	Blaker	Andrews
Thursday,	,,	25	Reader	Andrews	Jones
Friday,	,,	26	Blaker	Jones	Hay
Saturday,	,,	27	Andrews	Hay	Reader

			GROUP A.		GROUP B.	
DATE			Mr. Justice BENNETT *Non-Witness*	Mr. Justice SIMONDS *Witness*	Mr. Justice MORTON *Witness*	Mr. Justice. UTHWATT *Non-Witness*
Monday,	Feb.	22	Mr. Jones	Mr. Hay	Mr. Andrews	Mr. Blaker
Tuesday,	,,	23	Hay	Reader	Jones	Andrews
Wednesday,	,,	24	Reader	Blaker	Hay	Jones
Thursday,	,,	25	Blaker	Andrews	Reader	Hay
Friday,	,,	26	Andrews	Jones	Blaker	Reader
Saturday,	,,	27	Jones	Hay	Andrews	Blaker

Parliamentary News.

HOUSE OF LORDS.

Cardiff Corporation Bill [H.L.].
Grand Union Canal Bill [H.L.].
Liverpool Hydraulic Power Bill [H.L.].
Committed. [9th February.
Police (Appeals) Bill [H.C.].
Universities and Colleges (Trusts) Bill [H.C.].
Read Second Time. [16th February.

HOUSE OF COMMONS.

Bridgwater Gas Bill [H.C.].
Colne Valley Water Bill [H.C.].
Northampton Corporation Bill [H.C.].
Sunderland Corporation Bill [H.C.].
Read Second Time. [9th February.
House of Commons Disqualification (Temporary Provisions) Bill [H.C.].
War Damage (Amendment) Bill [H.C.].
Read Second Time. [10th February.

QUESTIONS TO MINISTERS.

JUVENILE OFFENDERS.

Sir A. BAILLIE asked the Home Secretary to what extent there has been a fall in juvenile crime; and what are the latest police reports on this subject from the Home Counties.

Mr. H. MORRISON: The number of boys or girls under seventeen found guilty of indictable offences in summary courts in England and Wales during the first eight months of 1942 was less by nearly 18 per cent. than the corresponding number for the first eight months of 1941. No later figures for the whole country are yet available, but the reports received from the police authorities in Kent, Surrey, Essex and Hertfordshire show a decrease of 12 per cent. in the total figure of 1942 as compared with 1941. In the Metropolitan Police District the figure for juveniles aged fourteen to sixteen was about 11 per cent. less in 1942 than in 1941, but there was an increase of over 18 per cent. for children under fourteen.

[11th February.

Rules and Orders.

S.R. & O., 1943, No. 177/L.5.

SUPREME COURT, ENGLAND—PROCEDURE.

THE TAXATION OF COSTS (WAR-TIME VACANCY) ORDER, 1943.

DATED FEBRUARY 5, 1943.

Whereas by section 105 of the Supreme Court of Judicature (Consolidation) Act, 1925,* it is enacted that the several officers of the Central Office of the Supreme Court shall perform such duties and have such powers in relation to the business of the Supreme Court as the Lord Chancellor may by Order direct;

And whereas by section 112 of the said Act it is enacted that the clerks employed in the offices of the Supreme Court shall be classified in such manner as the Lord Chancellor with the concurrence of the Treasury may by Order direct, and shall be employed in such capacities as the Lord Chancellor may by Order direct;

And whereas by Rule 18 of Order LXV of the Rules of the Supreme Court, 1883, it is prescribed that the Lord Chancellor may by Order direct that the taxation of costs in any particular class of business to be specified in the Order shall be referred to one or more Taxing Masters or taxing officers to be named or described in the Order, and that subject to any such directions the business of the Taxing Department of the Central Office, known as the Supreme Court Taxing Office, shall be regulated and distributed by the Taxing Masters in such manner and order as the Taxing Masters may deem expedient;

And whereas it is expedient, as a special war-time measure, that during the vacancy caused by the retirement of Master Greenwood, A. W. Porter, Esquire, one of the principal clerks in the Supreme Court Taxing Office, should be classified as, and be employed in the capacity of, Assistant to the Taxing Masters, and that the powers conferred on him as a principal clerk by the Taxation of Costs (Principal Clerks) Order, 1930, should be increased while he is so employed:

Now, therefore, I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers mentioned above and of all other powers enabling me in this behalf, do hereby order and direct as follows:—

1. During the vacancy aforesaid and as a special war-time measure, the said A. W. Porter shall be employed in the capacity of Assistant to the Taxing Masters and shall, subject to the provisions of this paragraph, have power as a taxing officer to tax bills of costs without pecuniary limit and to sign certificates and allocaturs in respect of taxations which have taken place before him:

Provided that—

(i) this Article shall not apply to bills of costs arising out of witness actions, or to bills for taxation under the Solicitors Acts as between a solicitor and his client;

(ii) the Chief Taxing Master may reserve for taxation by a Taxing Master any particular case or classes of case;

(iii) in taxing bills the said A. W. Porter shall act under the supervision of the Chief Taxing Master and shall have regard to any directions which may be given him by the Chief Taxing Master;

(iv) if any party before the commencement of the taxation objects to the bill or any part of it being taxed by the said A. W. Porter, the bill

* 15 & 16 Geo. 5, c. 49

or the part to which the objection relates shall be taxed by a Taxing Master; and

(v) where a party who is dissatisfied with the allowance or disallowance of the whole or any part of any items of a bill taxed by the said A. W. Porter as Assistant to the Taxing Masters in pursuance of this Order, carries in objections to the taxation under paragraph (39) of Rule 27 of the said Order LXV, the objections shall be dealt with under paragraph (40) of that Rule by a Taxing Master.

2. The powers conferred by this Order shall be additional to any powers exerciseable by the said A. W. Porter as a principal clerk.

3. This Order may be cited as the Taxation of Costs (War-Time Vacancy) Order, 1943, and shall come into operation on the 10th day of February, 1943.

Dated the 5th day of February, 1943. *Simon*, C.

S.R. & O., 1943, No. 215/L.6.

SUPREME COURT, ENGLAND—PROCEDURE.

THE PRINCIPAL PROBATE REGISTRY (PERSONAL APPLICATIONS) ORDER, 1943. DATED FEBRUARY 10, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and all other powers enabling me in that behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby order as follows:—

1. Notwithstanding anything in paragraph 3 of the Principal Probate Registry (Non-Contentious Business) Order, 1940† (which provided for the closing of the Personal Application Department), applications may be made at the Principal Probate Registry in London without the intervention of a solicitor for grants of probate and letters of administration in respect of estates to which this Order applies in accordance with the Rules, Orders and Instructions as to Personal Applications.

2. This Order applies to estates which appear to the proper officer to be of a gross value exceeding £500 and not exceeding £2,000 or of a gross value within such other pecuniary limits as the President may from time to time direct.

3. This Order may be cited as the Principal Probate Registry (Personal Applications) Order, 1943, and shall come into operation on the 15th day of March, 1943.

Dated the 10th day of February, 1943. *Simon*, C.
We concur *Merriman*, P.
A. T. Bucknill, J.

* 2 & 3 Geo. 6, c. 78. † S.R. & O. 1940 (No. 1672) I, p. 1004.

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

E.P. 151. **Apparel and Textiles.** Bedding (Manufacture and Supply) (No. 3) Directions, Jan. 29.

E.P. 146. Apparel and Textiles. Headwear (No. 3) Directions, Feb. 5.

E.P. 182. **Butter, Margarine and Cooking Fats** (Rationing), and **Cheese** (Rationing) Orders, 1942. Amendment Order, Feb. 6.

No. 203. **Chartered and Other Bodies** (Temporary Provisions). Port of London Authority (Extension of Term of Office) Order in Council, Feb. 10.

E.P. 8. **Control of Paper** (No. 56) Order, Feb. 3.

E.P. 201/S. 4 and 202/S. 5 (as one document).

201/S. 4. **Defence** (Administration of Justice) (Scotland) Regulations, 1940. Order in Council, Feb. 10, amending reg. 3.

202/S. 5. Defence (Local Government) (Scotland) Regulations, 1939. Order in Council, Feb. 10, adding reg. 4.

E.P. 193–200 (as one document). Defence (General) Regulations, 1939, and Defence (Palace of Westminster Fire Prevention) Regulations, 1941. Orders in Council, Feb. 10, 1943:

S.R. & O. 193 amending reg. 33B of, and the Third Schedule to the Defence (General) Regulations, 1939.

194 amending reg. 47AC to the Defence (General) Regulations, 1939. Application of agreement with crew to persons required to perform services in ships.

195 amending regs. 54C, 55, 56A, 56AAA and 56AB of the Defence (General) Regulations, 1939, and reg. 3 of the Defence (Palace of Westminster Fire Prevention) Regulations, 1941.

196 adding reg. 54CA to the Defence (General) Regulations, 1939. Additional powers as to war production undertakings.

197 adding reg. 55F to the Defence (General) Regulations, 1939. (Safeguards for persons carrying on offensive trades closed under concentration arrangements).

198 amending regs. 57B of the Defence (General) Regulations, 1939.

199 substituting a new regulation for reg. 63B of the Defence (General) Regulations, 1939. (Heather burning in Scotland).

200 adding reg. 99B (Application of Interpretation Act, 1889 to Defence Regulations, etc.) to, and amending reg. 100 of, the Defence (General) Regulations, 1939.

E.P. 169. Defence (United States Forces—Administration of Estates) Regulations, 1942. Order of the Secretary of State, Jan. 29, declaring the designated appropriate United States Authority.,

E.P. 187. **Electricity Supply** (Hours, Safety and Welfare) Order, Feb. 4.

E.P. 186. **Essential Work** (Boot and Shoe Industry) Order, Feb. 4.

E.P. 180. Essential Work (Coalmining Industry) (Amendment) Order, Feb. 5.

E.P. 175. **Food** (Points Rationing) (No. 2) Order, 1942. Amendment Order, Feb. 5.

No. 118. **Goods and Service** (Price Control). Prices of Goods (Price Regulated Goods) Order, Jan. 29.

E.P. 168. **Laundry** (Control) Order, Feb. 3.

E.P. 106. **Limitation of Supplies** (Misceallaneous) (No. 19) Order, Jan. 29.

E.P. 130. Limitation of Supplies (Miscellaneous) (No. 19) Order, 1943. General Licence, Feb. 1, *re* supply of goods to privileged consumers.

E.P. 214. **Livestock** (Sales) (Northern Ireland) Order, Feb. 10.

E.P. 171. **Machinery, Plant and Appliances** (Control) (No. 3) Order, 1942. General Licence, Feb. 4, *re* acquisition of Belting and Tyres.

E.P. 166/L.4. **Metropolitan Police Courts** (No. 2) Order, Feb. 1.

E.P. 185. **Milk** (National Scheme) Order, 1942. Amendment Order, Feb. 7.

E.P. 184. Milk (Scheme of Supply) Order, 1942. Amendment Order, Feb. 7.

E.P. 149. **Miscellaneous Goods** (Prohibition of Manufacture and Supply) (No. 3) Order, Jan. 30.

No. 179/S.3. **National Health Insurance** (Insurance Committees and Panel and Pharmaceutical Committees) Amendment Regulations (Scotland), Jan. 29.

E.P. 174/S.2. **Police (Scotland).** Temporary Constables (Emergency) (Scotland) Rules, Jan. 18.

E.P. 173. **Rationing** (Personal Points) Order, 1942. Amendment Order, Feb. 4.

No. 177/L.5. **Supreme Court, England.** Procedure. Taxation of Costs (War-time Vacancy) Order, Feb. 5.

No. 127. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 2) Order, Feb. 2.

No. 167. **Unemployment Insurance** (Emergency Powers) (Amendment) Regulations, Jan. 25.

No. 178. **War Risks** (Commodity Insurance) (No. 1) Order, Feb. 5.

STATIONERY OFFICE.

List of Statutory Rules and Orders, 1942. 1s. (1s. 2d.)
List of Statutory Rules and Orders, Jan. 1 to 31. 2d. (3d.).

WAR OFFICE.

Home Guard Regulations. Vol. 1, 1942. Amendments 1, Jan, 1943. 1d. (2d.).

MINISTRY OF AGRICULTURE AND FISHERIES.

Farmers' Income Tax. 3d. (4d.).

Notes and News.

Honours and Appointments.

The Home Secretary has nominated Mr. W. HANBURY AGGS, M.A., LL.M., Barrister-at-Law, as President of the Tribunal of Appeal under the London Building Acts, 1930 to 1939. Mr. Hanbury Aggs was called by the Inner Temple in 1893.

The Minister of Town and Country Planning has appointed Mr. S. W. C. PHILLIPS to be his Principal Private Secretary, and Miss A. M. SMITH to be his Assistant Private Secretary. The Parliamentary Secretary to the Ministry of Town and Country Planning has appointed Mr. R. L. HASBERRY to be his Private Secretary.

Captain GEOFFREY HOWARD WALKER (Green Howards), solicitor, of Messrs. Bury & Walkers, solicitors, of Barnsley, has been awarded the Military Cross for gallant and distinguished service in the Middle East. Captain Walker was admitted in 1933.

Notes.

Under reg. 55 of the Defence (General) Regulations, 1939, the Minister of War Transport orders that from the 16th February no person shall consign or tender or cause to be consigned or tendered for conveyance by rail, or take with him upon any train, any flowers or plants other than flowers or plants for export for which a certificate of health for export has been granted by the Ministry of Agriculture, plants used for producing food crops, and hardy nursery stock not in soil or in pots. But it is provided that a railway company may in its absolute discretion permit a passenger to carry with him in his compartment, for purposes unconnected with trade or business, a small quantity of flowers or plants unpacked, or so packed as to disclose their nature on sight.

Wills and Bequests.

Mr. Edward Lonsdale, solicitor, of Lytham, Lancs, left £23,109, with net personalty £22,821.

Mr. Ernest Barnard Nichols, solicitor, of Laurence Pountney Hill, E.C., and of Balham, left £24,074, with net personalty £21,077.